HON'BLE SRI JUSTICE P.S. NARAYANA

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+W.P.No.3194 of 1997

%21-12-2004

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Chenupati Chinnammai, d/o.Kondaiah,

r/o.Narnepadu Mandal, Guntur Dist.

..... Petitioner

VERSUS

$ 1 The District Collector,
Guntur District,Guntur.
2.The Land Acquisition Officer cum Revenue Divisional

Officer,Guntur.

3.The Mandal Revenue Officer,

Medikondur Mandal, Medikondur, Guntur District.

.....Respondents

< GIST:

> HEAD NOTE:

! Counsel for petitioner : Mr.N.SUBBA RAO

^ Counsel for Respondent No.2: G.P. FOR LAND ACQUISITION

? Cases referred

1. AIR 1995, SC 1549

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 3194 of 1997

Between:

Chenupati Chinnammai, D/o Kondaiah,
R/o Narnepadu Mandal, Guntur Dist.

..... PETITIONER

AND

1 The Dist.Collector,
Guntur Dist., Guntur.
2 The Land Aquisition Officer cum Revenue Divisional Officer,
Guntur.
3 The Mandal Revenue Officer,
Medikondur Mandal, Medikondur, Guntur Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction more particularly in the nature of writ of mandamus calling for the records, relating to and connected with the draft Notification dt.6.9.94 issued under Sec.4 (1) of the Land Acquisition Act, Sec.6 of the Draft declaration dt.7.9.95 issued by the 2nd respondent and to set aside the same as illegal, arbitrary and violation of the principles of natural justice.

Counsel for the Petitioner:MR.N.SUBBA RAO

Counsel for the Respondents : GP FOR LAND ACQUISITION

The Court made the following :

ORDER:

The writ petitioner prayed for issuance of writ order or direction more particularly in the nature of writ of mandamus calling for records relating to and connected with the draft notification dated 6-9-1994 issued under Section 4(1) of the Land Acquisition Act,1984, hereinafter in short referred as "the Act" for the purpose of convenience. Section 6 of the draft declaration dated 7-9-1995 issued by 2nd respondent and to set-aside the same as illegal, arbitrary and violation of principles of natural justice and pass other suitable orders.

It is stated that the petitioner purchased an extent of Ac.0-50 cents in Survey No.300/1 out of Ac.2-25cents from Kurra Anjaneyulu by registered sale deed dated 23-11-1987. The above dry land is in Medikondur Village and Mandal,Guntur District. Since 23-11-1987 she has been in possession and enjoyment of the same by raising cotton crops without any intervention whatsoever. It is further stated that the petitioner came to know that the second respondent issued 4(1) draft notification on 6-9-1994 and Section 6 of draft declaration on 7-9-1995 to acquire an extent of Ac.5.72 cents in Survey No.300/1 and 320 of Medikondur Village, Medikondur Mandal,Guntur District to provide house sites to weaker sections. It is also stated that the petitioner purchased the land on 23-11-1987, but however, the second respondent had not shown her name either in Section 4(1) notification or in Section 6 draft declaration. It is also stated that the petitioner is a small farmer owning an extent of Ac.0- 50 cents of land xand she has no other land except this land.

A counter affidavit is filed by the respondents denying the allegations and a specific stand was taken that there is some dispute between Anjaneyulu and his heirs and hence the awarded amount was deposited in Civil Court under Section 31(2) of the Act.

Sri N.Subba Rao, learned counsel representing the petitioner would submit that the petitioner is concerned with only an extent of land which she had purchased

under the registered sale deed dated 23-11-1987 and the petitioner is not concerned with the rest of the land relating to which there may be some dispute which may be pending in civil court under Section 31 of the Act. The learned counsel also would submit that this court granted an order of status quo and the same was in fact made absolute too. The learned counsel further placed strong reliance on Rambhai Lakshabai Bhakt, Vs.State of Gujrarat , and would submit that issuance of notice to the land owner is mandatory and hence, the said proceedings are liable to be quashed.

Per contra, the learned G.P. for Land Acquisition had taken this court through the contents of the counter affidavit and would submit that the procedure under the Act had been well followed and award also was passed and in view of dispute between Anjaneyulu and heirs of Anjaneyulu, the matter had been referred to under Section 31 of the Act and the same is pending in civil court. The learned counsel also would submit that in the light of the same, the writ petition is liable to be dismissed.

Heard the Counsel.

The specific case of the petitioner is that the petitioner purchased the property an extent of Ac.0-50 cents in Survey No.300/'1 out of Ac 2-25 cents from one Kurra Anjaneyulu, by virtue of registered sale deed dated 23-11-1987 and she has been in possession and enjoyment of the said property. It is also her specific case that neither her name was shown in the notification issued under Section 4(1) of the Act nor she was served with any notice at any point of time. There is no serious dispute or controversy relating to this aspect. Apart from this aspect of the matter, the petitioner also had taken a specific stand that the petitioner is a small farmer and the petitioner also raised certain other grounds in the affidavit filed in support of the writ petition. In the counter affidavit filed by the respondents, details relating to proposed acquisition to provide house sites to weaker sections in Medikondur village had been narrated. It was also further stated that after following the procedure Award was passed and in view of the dispute between Anjaneyulu and his heirs, the matter had been referred to civil court and the enquiry under Section 31 of the Act is pending disposal. No doubt, in the counter affidavit filed other details commencing from initiation of proceedings by issuance of 4 (1) notification till the reference made

under Section 31(2) of the Act had been narrated in detail. As per the material available on record in as much as there is no serious controversy relating to fact that the petitioner purchased an extent of Ac 0-50 cents in Survey No.300/1 of Medikondur Village from Kurra Anjaneyulu by virtue of a registered sale deed dated 23-11-1987 and the petitioner was not put on notice nor her name was shown in 4(1) notification, this court of the considered opinion that the petitioner was deprived of the opportunity of hearing relating to the proposed acquisition . In Rambhai Lakhabai Bhakt Vs. State of Gujrat, AIR 1995, SC 1549, the Apex Court while dealing with Section 5-A (2) of the Act at Paras 6 and 7 at page 1551 held:

> *Notice in the present case did indicate that the petitioner was at liberty to file his objections within 30 days from the date of the publication of the notice and in case he wished to and at the time when he filed the objections, he was also asked to appear either in person or through authorized representative or advocate, and he would be heard on his objections. Admittedly, the petitioner had not appeared, either in person or through advocate but had chosen to file his objections through post. It would be obvious he did not intend to avail the benefit of hearing while submitting objections. If it were a case that he personally appeared and filed objections and requested for hearing, but for one reason or other he was not heard, then time should be granted and perhaps it may be requested to be adjourned to a next short date to be heard. That would be a different circumstance to consider whether failure to give such a date for hearing violates S.5(2). The petitioner having chosen to send the objections through post and when the notice does indicate that he was to appear either in person or through advocate or authorized representative alongwith objections but failed, then there would be no need to give any further date of hearing.*
>
> *Right of hearing is mandatory under S.5A(2) and the Land Acquisition Officer is enjoined to give the opportunity of hearing to the owner or person known to be interested in the land. The ratio laid down by this Court in Shyam Nandan Prasad V.State of Bihar (1993) 4 SCC 255: (1993 AIR SCW 3013), also referred by Sri Diwan, is unexceptional and has to be complied with. Accordingly, the Land Acquisition Officer has not taken it lightly or casually in issuing the notice but the parties had not chosen to appear either in person or through counsel. No fault could be laid at the door of Land Acquisition Officer*

for not giving opportunity of hearing.

In the light of the fact that the writ petitioner was not put on notice at all, it is hereby directed that the respondents to issue notice to the writ petitioner relating to extent of Ac. 0-50 cents of land in Survey No.300/1 out of Ac 2-25 cents purchased from Kurra Anjaneyulu by registered sale deed dated 23-11-1987 and afford the petitioner a reasonable opportunity of hearing by permitting filing objections, if any, in this regard and proceed with the matter further in accordance with law.

The writ petition is accordingly disposed of with the above direction. No costs.

21-12-2004

L.R.copy to be marked.

Stp

One fair copy to the Honourable Mr.Justice P.S.Narayana (for his Lordships kind perusal).

To:

1 The Dist.Collector,
`Guntur Dist., Guntur.
2 The Land Aquisition Officer cum Revenue Divisional Officer,
Guntur.(with records)
3 The Mandal Revenue Officer,
Medikondur Mandal, Medikondur, Guntur Dist.

4 2CCs to G.P. for Land Acquisition

5.8 LR copies

6.The Under Secretary, Union of India, Ministry of Law,Justice and Company Affairs, New Delhi.

7.The Secretary,A.P.Advocates Association Library, High Court Buildings,Hyderabad.

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